



## **REQUEST FOR PROPOSALS FOR PUBLIC DEFENDER SERVICES**

### **I. PURPOSE OF REQUEST**

The City of Aberdeen requests proposals to provide public defense services for indigent criminal defendants for a term of two years commencing on January 1, 2023, with the option to extend the contract with the mutual agreement of all parties for an additional two-year period. This Request for Proposals (RFP) seeks responses from both private law firms and public agencies.

The City will pay the selected Public Defenders for representational services, including lawyer services and appropriate staff services, infrastructure, investigation and appropriate sentencing advocacy. All proposals should take into account Resolution 2015-02 adopted by the City (Attachment 1) and the Washington State Supreme Court Standards ("Standards") when submitting proposals. Proposals should include all necessary infrastructure, training, and services necessary to comply with the Standards.

Legal services per client will be provided from arraignment through probation and will include, but not be limited to, interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at court proceedings. The proposal should provide for attendance at five arraignment calendars per month, as well as any and all subsequent court appearances. Please see attached sample of the monthly Court calendar (Attachment 2).

Necessary and reasonable expert witness, investigative and other services as detailed in the attached form Contract (Contract") will be paid directly to the expert or investigator, or reimbursed to the contract provider when authorized by the Court.

### **II. INSTRUCTIONS TO PROPOSERS**

- A. All proposals should be sent to:  
Dani Smith  
Human Resources Director  
City of Aberdeen  
200 East Market Street  
Aberdeen, WA 98520
- B. All proposals must be in a sealed envelope and clearly marked in the upper left-hand corner "RFP – Public Defender."
- C. All proposals must be received by 4 p.m., December 16, 2022. An original and two copies of proposals must be presented. No faxed, emailed, or telephone proposals will be accepted.
- D. Proposals should be prepared simply and economically, providing a straightforward, concise description of the provider's capability to satisfy the requirements of the

request. Special bindings, colored displays and promotional materials are not desired. Emphasis should be on completeness and clarity of content. Use of both sides of paper for any submittals to the City is desirable whenever practical.

E. The City will attempt to schedule phone interviews, if desired, for December 21, 2022.

F. The firm or attorney selected shall be notified by December 27, 2022. The Aberdeen City Council must then ratify a contract with the selected firm or attorney.

G. All proposals must include the following information:

1. Indicate if you are submitting a proposal to be considered for the Primary Public Defender position, the Secondary (Conflict Attorney) position, or both.
2. A resume for each and every attorney who will provide legal services, or supervise the provision of legal services by others, illustrating the attorney's specific experience in criminal defense.
3. A statement warranting that each and every attorney proposed to provide legal services has read and is familiar the Supreme Court Standards originally adopted pursuant to the Order at 174 Wn2d. 1177 and 1192, as amended ("Standards"). Each proposer will be required to warrant that the proposal submitted takes into account all required training, infrastructure, and service provision required under the Standards.

In 2021, the City assigned an average of 75 cases per month. The number of assigned indigent defendants and the resulting trials are dependent on the unique facts and circumstances of any particular case and time period.

4. References.
5. Insurance. The proposer should review the draft contract and indicate their willingness and capability to provide insurance coverage of the same or similar nature. Proposers shall assure the City that their malpractice coverage contains no exclusion for ineffective assistance of counsel.
6. Provide information in your proposal addressing the following:
  - a. Your experience in providing public defense services and contract performance.
  - b. How long has your firm been in existence? How many years has it practiced criminal defense?
  - c. Has your firm handled indigent clients? Describe the type of cases in which you have represented such clients.
  - d. How many attorneys currently employed by your firm would be involved in public defense under the proposal? Resumes and references must be provided for each attorney.
  - e. How many staff employees does your firm employ? How many staff will be assigned to the public defense services contract? If contract or other services are necessary to comply with Supreme Court Standards, such as access to a mental health professional or interpreters, indicate how your firm will comply with the Standards in this regard. See proposed Contract, note any duration from provisions for non-routine services.
  - f. Does any attorney or employee of the firm have any conflict of interest with the City, or can reasonably anticipate any conflict of interest? How will any conflict be addressed?

7. Contract Performance:

- a. If your firm has previously provided or is providing contract services for a city or county, please provide any documented review of contract compliance under those contracts.
- b. Please note specifically any termination for cause of any public contract in whole or in part within the last ten years. Please note any corrective action required under any such public contract.
- c. Has any attorney proposed to provide services under your proposal been disciplined by the Washington State Bar Association, or any other mandatory bar association of any other state?
- d. Has any attorney employed by your firm been removed from a case because of a court finding of ineffective assistance of counsel?
- e. Has any attorney in your firm been monetarily sanctioned by a court for any reason? Please provide a summary of the sanction, including the court and date sanction was imposed.
- f. Has any attorney in your firm had an action for malpractice filed against the attorney in any courts? If so, what is the status or disposition of the filing?

**III. PROPOSED DELIVERY OF SERVICES (Scope of Services is described in Section VI.)**

Taking into account the Standards adopted by the City as well as by the Washington State Supreme Court, please provide the following information or proposals:

- A. Please describe your firm's general policy guidelines when addressing the needs of indigent misdemeanor clients.
- B. How will you monitor the case load of attorneys providing Indigent Defense Services?
- C. What type of training do the attorneys in your firm receive that would be relevant to the practice in criminal law and public defense?
- D. What is your firm's capacity for working with non-English speaking clients?
- E. Does your firm have any experience working with ex-offenders, the mentally ill, or other clients in need of social service referrals?
- F. Please provide information regarding your firm's ability to report both monthly and annually regarding the assigned case load, the disposition of cases, and the types of cases assigned.

**IV. SELECTION CRITERIA**

The selection of a Public Defender will be based upon the proven and potential ability of the proposer to comply with all Standards and ensure the client receives the best representation possible. The City will also consider the completeness of the written proposal, the qualifications of the specific individuals proposed for assignment to act as a Public Defender, the proposer's history of successfully fulfilling contracts of this type, experience in similar work as well as the competitiveness of the fee structure proposed. Each proposal will be independently evaluated on these factors.

**V. TERMS AND CONDITIONS**

- A. The City reserves the right to reject any and all proposals and to waive minor regularities in any proposal.
- B. The City reserves the right to request clarification of information submitted and to request additional information from any proposer.

- C. The City reserves the right to award any Contract to the next most qualified proposer, if the successful proposer does not execute a Contract within thirty (30) days after the award of Contract by Aberdeen City Council.
- D. The Contract resulting from the acceptance of the proposal shall be in approximately the form shown in Attachment 3a and 3b to this RFP. Any proposed amendment to the Contract should be noted in the proposal submitted. The City reserves the right to reject any proposed Contract change that does not conform to the specifications contained in the RFP, or that is not warranted to provide a level of service sufficient to meet the adopted Standards. Any proposed amendment to the Contract should be noted in the proposal submitted.
- E. The City shall not be responsible for any costs incurred by a firm in preparing, submitting, or presenting its response to the RFP.
- F. Term. Public defense services will commence on January 1, 2023, for an initial term of two (2) years, terminating on December 31, 2024. The parties may mutually agree to extend the resulting Contract for an additional term of two (2) years, terminating on December 31, 2026.
- G. Screening. Termination of indigency for eligibility for appointed counsel for this Contract shall be determined by the Aberdeen Municipal Court. The Public Defender will not be responsible for screening potential clients. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will so inform the Court and move to withdraw from the case.
- H. Reporting. The Public Defender shall file monthly reports with the City delineating each client who has been appointed to the Public Defender to representation, in a format mutually agreed to by the parties. The format shall not include attorney/client privileged information. The report shall designate whether the client was “conflicted” to another attorney for representation or the client hired another private attorney. The Court will indicate the charges filed and the disposition of any case as appropriate. The report shall be due by the 10<sup>th</sup> day of the month following when cases are assigned.
- I. Case Count. A case is defined as the filing of a document with the Court, naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. Multiple citations from the same incident will be counted as one case. Each case is counted only once, irrespective of any subsequent reappointments pursuant to a failure to appear (hereinafter FTA). Cases will be counted at the time of first appointment. Cases subsequently conflicted, where a private attorney is hired, will be noted on the next report and will not be counted as a Public Defender case.
- J. Associate Counsel. Any counsel associated with or employed by the Public Defender shall have the authority to perform the services called for herein, and the Public Defender may employ associated counsel to assist at the Public Defender’s expense. The Public Defender and all associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during a vacation and illnesses, in settings in more than one courtroom.
- K. Attorney Conflict. In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall work with the Court Administrator to refer the defendant to another attorney competent and able to provide legal services to the indigent. The cost of conflict counsel shall be paid by the City and not by the Public Defender.

- L. Discovery Provided. The City will provide to the Public Defender at no cost to the Public Defender or defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes, which shall be made available for inspection in accordance with the rules of discovery. The Public Defender will receive electronic copies of discovery or may request hard copies to be provided. The attached form Contract provides additional information regarding other routine and non-routine services and reimbursements.
- M. Code Provided. The City shall provide the Public Defender with a copy of the City's criminal code and any amendments thereto adopted during the term of this Contract.
- N. Assignment Prohibited. No assignment or transfer of the Contract or any interest in the Contract shall be made by the Public Defender without the prior written consent of the City.
- O. Case Loads. Proposers holding more than one public defense Contract shall list each Contract. All attorneys providing services shall maintain a case load that fully complies with the City and Washington State Supreme Court Standards, whichever is more restrictive. Copies of quarterly certifications to the Court shall be provided to the City. In the event that these Standards significantly change during the term of the agreement, the parties will meet and renegotiate the terms of the Contract. A "significant change" is a change beyond the adopted City of Supreme Court Standard that materially alters a term or condition of the Contract.

## **VI. SCOPE OF SERVICES**

- A. General Description. Pursuant to Chapter 10.101 RCW, all indigent criminal defendants who are determined to be eligible and are charged under the ordinances of the City will be referred to the Public Defender. The Public Defender will provide legal representation for each of these defendants and court appointment or screening through trial, sentencing, post-conviction review and any appeal to Superior Court or the Washington appellate courts. Performance of services shall in all respects comply with the Standards adopted by the Washington State Supreme Court and the City, whichever is more restrictive.
- B. Standards for Public Defense. In addition to the Standards, the Public Defender shall at all times comply with the Rules of Professional Conduct and all other applicable Court rules as the same exist or are hereafter amended. The Public Defender shall maintain the highest standards of conduct and behavior towards the Court, the prosecutors, and all parties. The Public Defender shall comply with the standards for Public Defense Services adopted by the City as the same exist or are hereafter amended.
- C. The Public Defender will attempt to initiate contact with assigned clients within twenty-four (24) hours of assignment. The Public Defender will provide their clients with contact information for availability during office hours. The Public Defender will return client phone calls or other attempts to contact the Public Defender within forty-eight (48) hours excluding weekends. The Public Defender shall provide the prosecutor and City Police Department with contact information assuring twenty-four (24) hour a day access.
- D. The Public Defender shall maintain an office and all other infrastructure including an adequate number of secretaries, word processing, paralegals, and any and all other support services, including adequate and competent interpreter services necessary to comply with the "Standards." Expert witness, investigator services, mental health assessments and all other services may be provided at additional cost pursuant to Court authorization. See the attached Contract for details regarding non-routine services.

**VII. COMPENSATION**

- A. Please present detailed information on the firm's proposed fee schedule either on a price per case basis or on a total yearly/monthly fee, noting any variations for non-routine services. Services not reference in this RFP or the attached draft Contract that are not explicitly identified as non-routine will be assumed to be included in the basic fee.
- B. If the proposal includes by-case compensation, payment by the City for the services will be made only after the services have been performed (through judgement and sentence or dismissal). An itemized billing statement shall be submitted in a form approved by the City. Payment shall be made on a monthly basis in accordance with the City's accounts payable procedures.
- C. By submitting its proposal, the proposer warrants that they and all attorneys performing services under the agreement have studied the Standards adopted by the City and the State Supreme Court, and have obtained, as necessary, applicable accounting review of the overhead costs necessary to provide all required infrastructure and services required by such Standards. Proposer further warrants that the proposal submitted is adequate to provide reasonable compensation for the provision of public defense services in accordance with such Standards.

# ATT-1

## RESOLUTION No. 2015 - 02

### A RESOLUTION ADOPTING PUBLIC DEFENSE STANDARDS FOR THE ABERDEEN MUNICIPAL COURT.

**WHEREAS**, RCW 10.101.030 requires cities operating a municipal court to adopt standards for the delivery of public defense services;

**WHEREAS**, the city council has determined that adopting standards by resolution will ensure that all indigent defense services, whether by written contract with the city or by special appointment of the municipal court, shall comply with the standards adopted by the city; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ABERDEEN:** the following standards for the provision of indigent defense services are adopted:

**STATEMENT OF INTENT AND INTERPRETATION:** These standards are adopted in order to comply with the requirements of Washington statutes and the rules established by the Washington State Supreme Court. The provisions of these standards shall be broadly and liberally construed to achieve their stated purpose, which is to provide standards which afford “quality representation” in the provision of public defense to indigent criminal defendants. “Quality representation” describes the minimum level of attention, care, and skill that Washington citizens would expect of their State’s criminal justice system. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or interpretations of the rules and standards by the Washington courts.

#### **1. DUTIES AND RESPONSIBILITIES.**

1.1 Public Defense Services shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender’s primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Public Defense shall be provided to indigent clients whose eligibility has been determined by the Municipal Court through an established screening process.

1.3 All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a Certification of Compliance as required by CrRLJ 3.1 and JuCR 9.2. Such forms shall be filed with the Aberdeen Municipal Court. Copies of each Public Defender's certification shall be available to the City on request.

1.4 Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of non-discrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.

## **2. QUALIFICATIONS AND TRAINING.**

2.1 Every Public Defender performing services under contract with the City shall satisfy the minimum requirements for practicing law in the state of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 Public Defenders [and interns] performing services under contract shall:

- 2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;
- 2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);
- 2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;
- 2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and be familiar with mental health issues and be able to identify the need to obtain expert services;
- 2.2.5 complete seven (7) hours of continuing legal education within each calendar year and courses related to public defense practice.

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services.

## **3. ADMINISTRATION, SUPPORT SERVICES AND INFRASTRUCTURE.**

3.1 Contracts for services and proposals submitted in pursuit of such contracts shall require the Public Defender to provide for or include adequate administrative support, including but not limited to:



3.1.1 Travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space and supplies. Proposals for contracts shall be evaluated to address the training of attorneys and staff (see Section 2 above) and provide for adequate staffing and other costs associated with the day to day management of a law office.

3.1.2 Private offices and/or conference rooms shall be available which allow the maintenance of confidentiality. A telephone system, internet access and postal address shall be provided by the Public Defender.

3.2 The Public Defender shall provide for adequate staffing under the contract. An adequate staff includes legal assistance, accounting services, case management services and/or programs and access, when needed, to the services of an investigator, social worker, mental health professional and translator.

#### **4. EVALUATION AND MONITORING.**

4.1 Public Defense Services shall include a case reporting system and information management system. Such systems shall have the capability to provide periodic reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract, case disposition and history.

##### **4.2 Complaints.**

4.2.1 The Mayor shall designate a contact point for complaints regarding the provision of services by the Public Defender.

4.2.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

4.2.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Human Resources Director, or an independent third-party designated by the Director, provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the Municipal Court Judge. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy.

#### **5. CASELOAD LIMITS.**

5.1 The caseload of the Public Defender shall consist of misdemeanors and RALJ appeals to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

5.2 Alternative 1. No Public Defender performing services by contract shall exceed four hundred (400) cases in any calendar period. Contracts for Services shall prohibit the Public Defender from performing services under any other similar contract which, taken in conjunction with the services to be performed under the contract, would exceed the case count in any calendar year. The case count for a Public Defender who maintains a private practice shall be adjusted to reflect the relative percentage which criminal defense relates to the Public Defender's total practice. For example, an attorney whose practice consists of fifty percent (50%) services provided under contract to the City (adjusted for any other Public Defense Services performed for another entity) and fifty percent (50%) private practice, the total case count for such an attorney shall not exceed two hundred (200) cases.

5.2 Alternative 2. The caseload for the Public Defender shall not exceed three hundred (300) cases per year, determined in accordance with the case count methodology established below.

5.2.1 A case credit is a unit of work computed as follows:

5.2.1.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Attorney to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no credit for work on cases which are substantively identified as conflicts, with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

5.2.1.2 Each pre-trial case is counted only once, irrespective of any subsequent reappointment pursuant to when a client fails to appear (FTA). The case will be counted at the time of first appointment. In cases where a defendant was previously represented by a Public Defender in pre-trial status, the case will not be counted again unless the defendant FTA's at a post-conviction hearing. Post-conviction cases where defendants FTA and are subsequently reappointed to the Public Defender will be counted again; however, this will occur only once, no matter how many times a defendant FTA's and the Public Defender is reappointed when the case is in post-conviction status, the case will be counted only once.

5.2.2 A distinction exists in types of misdemeanors which may require different time and effort to ensure different effective representation. Court administrative procedures and jurisdictional policies are in place for certain simple misdemeanors such as bail forfeitures, post and forfeiture stipulations, and civil compromises for offenders of certain misdemeanors that permit a Public

Defender to handle more misdemeanor cases. Therefore, the following units of credit shall be considered when determining case credit workload standards:

5.2.2.1 Cases in which there is a resolution, which results in a disposition other than those specifically mentioned above, but which does not require the Public Defender to file or respond to any motions in the matter or appear at trial shall be billed as one-third (1/3) case credits.

5.2.2.2 All other misdemeanors shall be one (1) case credit, unless a motion is filed or the matter is taken to trial, in which case it shall be counted as two (2) case credits.

5.2.2.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

5.3 Alternative 3. The caseload for the Public Defender shall not exceed three hundred (300) cases per year, determined in accordance with the Model Misdemeanor Case Weighting Policy established by the Washington State Office of Public Defense, or determined in accordance with the Indigent Defense Case Weighting System for Grays Harbor County District Court.

5.4 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

5.5 The standards provided herein for caseloads may be adjusted up or down depending upon the complexity of any particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards may be increased depending upon the complexity and requirements of the case, and such adjustment shall not be unreasonably refused by the City. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

5.6 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

5.7 The monthly reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and cases which the Public Defender has been assigned a higher case count.

**6. COMPENSATION.** The city of Aberdeen is a public agency whose revenues and resources are limited by statute, the constitution, and our local economy. The City has an obligation to obtain the quality representation to indigent defendants at a reasonable price that takes into consideration the resources of the City, and the needs of its citizens. Within those inherent limitations, the Public Defense Services afforded by contract shall ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. In each case, compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Due to the limited jurisdiction of the municipal/district court, misdemeanors and RALJ misdemeanor appeals pursuant to Superior Court constitute the assigned caseload under contract. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

6.1 The contract shall provide for extraordinary compensation in the event that a particular case requires an extraordinary amount of time and preparation. The conditions under extraordinary fees may be charged will be defined within any contract.

6.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract. Such arrangements are prohibited by ethical considerations.

6.3 Among the reasonable expenses to be covered by the contract include expert witnesses, investigative costs, and the administrative overhead costs of paraprofessionals, including, as needed, mental health professionals, social workers, and translators.

6.4 The City's contract with assigned or Conflict Counsel may provide for payment by voucher. Assigned or Conflict Counsel shall be paid by the case upon completion. Contract counsel shall be paid monthly without regard to the number of cases closed based upon the contract's estimation of cases to be assigned during any calendar period. In the event that the case limits are exceeded, the contract shall provide for additional compensation to the contractor, including but not limited to the additional cases assigned as well as any impact which the additional case assignments may have upon administrative and attorney overhead of the Public Defender. For example, if the assignment of additional cases requires the Public Defender to add staff or increase training, administrative and other overhead charges, the City and Public Defender shall enter into negotiation to provide for reasonable compensation that assures the



provision of quality representation to indigent defendants.

## **7. EXPERTS AND INVESTIGATORS.**

7.1 A Public Defense Contract shall provide reasonable compensation for investigators and experts of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

7.2 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters.

7.3 The services of investigators and expert witnesses will be provided under separate contract when approved by the Court through ex parte motion. Experts and investigators will be paid directly by the City.

## **6. TERMINATION AND REMOVAL.**

6.1 Termination of the contract shall occur only for "good cause." Good cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and the willful disregard of the these Standards. Termination may also occur for violation of the express terms of the contract, provided, however, that the Public Defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

6.2 Removal by the court of counsel from representation normally should not occur over the objection of the attorney and the client.

## **9. SUBSTITUTION CONFLICT COUNSEL.**

9.1 The selection process for a Public Defender shall be by review of names and experience levels of the attorneys who will actually provide services, to ensure that they meet minimum qualifications. The contract shall prohibit sub-contracting without the express written consent of the City. The City will endeavor to contract directly with the service providers.

9.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be available, either through a joint contract with the Public Defender and Conflict Counsel, by separate contract with Conflict Counsel or by court appointment. In the event that alternative or

Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of alternative or Conflict Counsel.

9.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

9.4 Conflict Counsel may be assigned:

9.4.1 by the Municipal Court upon the request of the Public Defender;

9.4.2 in accordance with the terms of a joint contract with the Public Defender and Conflict Counsel, or

9.4.3 pursuant to a separate contract.

**10. SUPERVISION, MONITORING AND EVALUATION OF ATTORNEYS.**


Candidates for Public Defender services are encouraged, but not required, to comply with the provisions of Standard 10 and 11 as established by the Washington Bar Association, Standards for Indigent Defense Services, approved June 3, 2011, or as subsequently amended. The City recognizes that smaller firms providing Public Defense Services may provide quality service through experienced practitioners. Wherever possible, larger contracting agencies should make provision for supervision, monitoring and evaluation in accordance with Bar Association standards or provide alternative methods for the supervision, monitoring and evaluation of attorneys which achieve substantially the same goals shall be given for effective supervision, monitoring and evaluation.

**11. UPDATE AND EVALUATION.** As the rules established by the Washington State Supreme Court are applied and interpreted by the courts and, when appropriate, the Bar Association and other administrative agencies, the City states its intent to review and modify these standards.

**10. EFFECTIVE DATE.** The provisions of this resolution shall be effective upon adoption, except as expressly provided herein.

**PASSED and APPROVED** on JANUARY 28, 2014.

ATTESTED:

  
Kathryn Skolrood, Finance Director

  
Bill Simpson, Mayor



**CITY OF ABERDEEN LEGAL DEPARTMENT**  
ERIC NELSON (3233) • FOREST WORGUM (3232) • JANA FERRIER (3231)

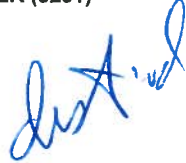
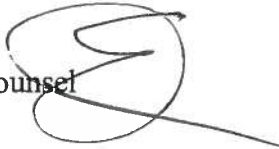
**TO:** Public Safety Committee

**FROM:** Eric S. Nelson, Corporation Counsel

**DATE:** January 21, 2015

**RE:** Resolution adopting indigent defense standards for municipal court

**CC:** Mayor & City Council  
Hon. Susan Solan, Municipal Court Judge  
Harbor Defense LLC



---

**ACTION REQUESTED:** Pass the attached resolution adopting indigent defense standards at the January 28 city council meeting.

**SUMMARY:** Adoption of the proposed resolution is necessary to ensure that attorneys providing indigent defense services in Aberdeen Municipal Court, whether by contract or appointment by the court, are bound by the same standards.

**BACKGROUND:** State law and Supreme Court rules require that cities adopt standards for indigent defense services. The Ninth Circuit has also created indigent defense standards by case law. The new contract between the city and Harbor Defense LLC for indigent defense services adopted case load limitations but anticipated that the city would adopt a resolution setting additional standards. The standards in the resolution have been reviewed by the city's public defenders and will be incorporated by reference in their contract.

In the past the city has not adopted standards by resolution. Instead, the standards have been set out in the contract for indigent defense. Adopting the standards by a separate resolution will ensure that the standards also apply to attorneys appointed by the court, without a contract, and will provide guidance for negotiating future contracts for indigent defense.

**ATTACHMENT:** Proposed resolution

# November 2022

## ATT-2

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 9am In custodies 1:30 pm Community Court	2 9am Contested Infractions 9:30am In custodies	3 8:30am Pre-Trials 10:30am In custodies 1:30pm Sentence Compliance	4	5
6	7 10:30am In custodies 1:30pm Arraignments	8 9am Hired Attys 10:30 In custodies 1:30 pm Community Court	9 10:30am In custodies	10 8:30am Pre-Trials 10:30am In custodies 1:30pm Sentence Compliance	11	12
13	14 10:30am In custodies 1:30pm Arraignments	15 9:30am In custodies 1:30 pm Community Court	16 8am Jury Trial 10:30am In custodies	17 8:30am Pre-Trials 10:30am In custodies 1:30pm Sentence Compliance	18	19
20	21 10:30am In custodies 1:30pm Arraignments	22 9am Hired Attys 10:30 In custodies No comm court	23 9am In custodies	24 HOLIDAY	25	26
27	28 10:30am In custodies 1:30pm Arraignments	29 10:30am In custodies 1:30 pm Community Court	30 10:30am In custodies			



## AGREEMENT TO PROVIDE INDIGENT DEFENSE SERVICES

WHEREAS, the City of Aberdeen, Washington (hereinafter "City") provides indigent defense services to individuals who have been certified for representation in criminal charges before the Aberdeen Municipal Court (hereinafter "Municipal Court"); and

WHEREAS, {FIRM NAME}, (hereinafter "Attorney") are licensed attorneys in good standing in the State of Washington who have been selected to perform services to indigent defense clients under contract with the City;

WHEREAS, a decision by the Federal Court for the Western District of Washington, the Honorable Robert Lasnik, in a case styled *Wilbur, et al v. Mt. Vernon, et al* (hereinafter the "Decision") emphasizes the need for the City to provide indigent defense services to misdemeanor clients in municipal and district courts in a manner which fully complies with the City's obligations under the Sixth and Fourteenth Amendments to the United States Constitution, and

WHEREAS, by Resolution 2015-02, the City has adopted standards for public defense pursuant to the requirements of RCW 10.101.030; now, therefore,

The City and Attorney have entered into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. Scope of Services, Standards and Warranty. The Attorney will provide indigent defense services in accordance with the standards adopted by Resolution 2015-02. The Attorney warrants that they, and every attorney and/or intern employed by the Attorney to perform services under this contract, has read and is fully familiar with the provisions of the Washington Supreme Court rule, the WSBA Standards for Indigent Defense, and the standards adopted by the City pursuant to Resolution 2015-02 (hereafter referred to as "Standards") and Decision. Compliance with these Standards and Decision goes to the essence of this Agreement. The Attorney, and every attorney and/or intern performing services under this Agreement, has knowledge of the Standards, will comply with the Standards, and shall certify compliance quarterly with the Municipal Court on the forms established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing with the Municipal Court. The Attorney further warrants that his/her proposal, reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services and systems necessary to comply with the Standards—which include, by way of illustration and not limitation.
  - 1.1. The Attorney shall provide to the Aberdeen Police Department the telephone number or numbers at which an attorney may be reached for "critical stage" advice to defendants during the course of police investigations and/or arrest twenty-four (24) hours each day.
  - 1.2. The Attorney, at the earliest possible time following appointment (within three days if the defendant is in custody) shall review with each assigned defendant the elements of the offense, the presumption of innocence, the prosecutor's burden to prove each element beyond a reasonable doubt, the right to a jury trial, the right to a speedy trial, the right to present a defense, the maximum penalties, any mandatory

minimum penalties, that it is solely the client's decision to enter a plea of guilty or proceed to trial, and any other witness or investigative issues.

- 1.3. The Attorney, at the initial meeting, shall also assess each client's ability to understand English and need for an interpreter, each client's competency; each client's literacy, and each client's citizenship and/or immigration issues. Additionally, the Attorney shall provide contact information for the Attorney and check for any conflicts.
- 1.4. The Attorney will assign counsel to cases four days in advance of motion and bench trial calendars and will arrive 15 minutes prior to the start of the scheduled calendar. Required public defender service includes appearance at the Aberdeen Municipal Court for all criminal case calendars, unless excused by the Court, which include standby representation to all in-custody defendants as well as general advice to defendants as out-of-custody arraignments.
- 1.5. The Attorney shall employ a system of proper review to avoid conflict cases, and shall review all cases prior to the scheduled court date and contact the City Prosecutor for possible resolution.
- 1.6. The Attorney will use two (2) attorneys if the calendar has more than 20 defendants assigned to the Public Defender's office.
- 1.7. The Attorney shall maintain contemporaneous records of work performed under the contract and shall file quarterly reports with the City which include the following information:
  - 1.7.1. the number of cases assigned to each attorney during the period with a year to date total:
  - 1.7.2. the number of resolved cases in which the following services were requested:
    - 1.7.2.1. Expert services
    - 1.7.2.2. Interpreter services;
    - 1.7.2.3. Investigator was utilized;
    - 1.7.2.4. In which motions were filed resulting in dismissal or significant reduction of charges;
    - 1.7.2.5. Tried to a jury or in which charges were dismissed or significantly reduced on the day of trial;
    - 1.7.2.6. Resolved by a dismissal of the charges, a significant reduction in charges, or dismissal of other cases and plea on the remaining case(s); and
    - 1.7.2.7. Number of cases in which the defendant failed to appear for a trial

setting.

- 1.7.3. The number of appeals and/or writs; and
- 1.7.4. The number and type of criminal cases handled outside of this contract by the service providers listed in Section 9 ("service providers") (including cases assigned by another public entity); and
- 1.7.5. The percentage of the service providers' practice spent on civil or other non-criminal matters.
- 1.8. The Attorney maintains confidential reporting forms and a copy of such form has been provided to the City. The forms will be maintained for review in the event the City initiates a review of Attorney's performance or for utilization in the event of complaint. The Attorney will promptly respond to complaints by indigent defendants and work diligently to resolution.
- 1.9. The Attorney will provide training in accordance with City and WSBA Standards. Each attorney performing services shall participate in continuing legal education (CLE) programs providing at least seven (7) hours applicable to criminal defense in a misdemeanor setting.
2. Compensation. The City shall pay to the Attorney for services rendered under this Contract the sum of \$XXX per month. This amount shall represent compensation for all matters assigned to Attorney involving representation at arraignment, pre-trial appearances, motions, bench trials, jury trials, sentencing, status conferences, and reviews. Additional compensation may be provided to Attorney as follows: Attorney shall be paid an additional fee of \$XXX for any scheduled jury trial where an attorney is required to appear on the day of trial regardless of whether a jury is selected, or the case proceeds to verdict. Additionally, Attorney shall be paid an additional fee of \$XXX for any appeal to the Superior Court in which a brief is filed.
  - 2.1. Case Counts. The above charge is based upon the historical case counts and anticipation that unweighted cases for the City will total 400 cases per year, averaging 100 cases per quarter. As provided in the Standards, the case counts also include the Attorney's appearance at all arraignment calendars. For the purposes of this Agreement, the City has adopted an unweighted case count. As provided in the Standards and required by CrR 4.1, Attorney shall appear at all arraignment calendars, status conferences and reviews, including probation hearings.
  - 2.2. Base Compensation. Except as expressly provided in Section 2.3, the cost of all infrastructure administrative, support and systems as well as standard overhead services necessary to comply with the established standards is included in the base payment provided in Section 2.1 above.
  - 2.3. Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the Municipal Court from funds available for that purpose:

2.3.1.      **Preauthorized Non-Routine Expenses.** Non-routine case expenses requested by Attorney and preauthorized by order of the Aberdeen Municipal Court. Unless the services are performed by Contractor's staff or subcontractors, non- routine expenses include, but are not limited to:

- (i)      medical and psychiatric evaluations;
- (ii)     expert witness fees and expenses;
- (iii)    interpreters for languages not commonly spoken in the City or interpreters for services other than attorney/client communication utilizing the CTS Language Link unless otherwise approved;
- (iv)     polygraph, forensic and other scientific tests;
- (v)      computerized legal research;
- (vi)     investigation expenses; and
- (vii)    any other non-routine expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2.3.2.      **Lay Witness Fees.** Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.3.3.      **Copying Clients' Files.** The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus Attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.3.4.      **Copying Direct Appeal Transcripts for RALJ Appeals.** The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

2.3.5.      **Records.** Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

2.3.6.      **Process Service.** The cost for the service of a subpoena as authorized by the court.

2.4. **Invoices.** The Attorney shall submit monthly invoices as a condition of payment to the Human Resources Office for purposes of case reporting and management. Said invoices shall contain the number of appointed cases, the number of appointed defendants, the cause number for each case, the date of appointment, and the charges filed against the defendant. The City shall pay the Attorney within thirty (30) days of the receipt of a correct invoice, in accordance with the City's usual payment procedures. If the City objects to all or any portion of any invoice, it shall so notify the Attorney within twenty (20) days from the date of receipt but shall pay the undisputed portion of the invoice. The parties shall immediately make every effort to settle the disputed portions of any invoice. Acceptance of any payment by the Attorney shall constitute a release of all payment claims against the City arising under this Agreement as to such portion of the

Services. No payment to the Attorney, whether periodic or final, shall constitute a waiver or release by the City of any claim, right or remedy it may have against the Attorney regarding performance of the Services as required by this Agreement.

- 2.5. Quarterly Review. The Attorney shall each quarter review the numbers of cases assigned. For each case per quarter over XX cases, an additional fee of \$XXX per case shall be assessed. Thereafter the parties shall confer and confirm Attorney's capacity to remain in compliance with the Standards with existing infrastructure.
3. Term. The term of this agreement shall be from 12:01 a.m. January 1, 2023 through 11:59 p.m. December 31, 2024, unless sooner terminated as provided in this Agreement.
  - 3.1. For Cause. This agreement may be terminated for cause for violation of any material term of this agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of the court and the ethical obligations established by the Washington State Bar Association, a violation of the Standards of the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney, or any attorney providing service under this agreement, has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Attorney who shall have ten (10) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.
  - 3.2. Termination on Mutual Agreement. The parties may agree in writing to terminate this contract at any time upon sixty (60) days written notice. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.
  - 3.3. Obligations Survive Termination. In the event of termination of this Agreement, the Attorney will continue to represent clients consistent with his or her ethical obligations on assigned cases set for trial to be held within sixty (60) days of the date of termination until a case is concluded on the trial court level or the client fails to appear for a scheduled court appearance. The City shall compensate the Attorney as provided in this Agreement.

The Attorney will reasonably cooperate with newly appointed counsel on case reassignment in fulfillment of his or her ethical obligations.
4. Nondiscrimination. Neither the Attorney nor any person acting on behalf of the Attorney, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this agreement.

5. Indemnification. The Attorney agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorney's fees or awards, and including claims by Attorney's own employees to which Attorney might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorney, his officers or agents. It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Attorney's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver. This clause shall survive the termination or expiration of this agreement and shall continue to be in effect for any claims or causes of action arising hereunder.
6. Insurance. The Attorney shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the Attorney, or the agents, representatives, employees, or subcontractors of the Attorney.
  - 6.1. Minimum Scope of Insurance. Attorney shall obtain insurance of the types described below:
    - 6.1.1. Commercial General Liability coverage with a \$2,000,000 general aggregate policy limit; and
    - 6.1.2. Malpractice Coverage with a policy limit of at least \$1,000,000 per occurrence.
    - 6.1.3. Coverage shall be in a form approved by the City Attorney or Special Counsel as applicable.
  - 6.2. Verification of Coverage. Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.
7. Work Performed by Attorney. In addition to compliance with the Standards, in the performance of work under this Agreement, Attorney shall comply with all federal, state and District laws, ordinances, rules and regulations which are applicable to Attorney's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
8. Work Performed at Attorney's Risk. Attorney shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorney's own risk, and the Attorney shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Attorney shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. **Personal Services, No Subcontracting.** This Agreement has been entered into in consideration of the Attorney's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement, and in the expectation that Attorney's work under this Agreement shall be performed by {Lead Attorney} (Bar #) and {Secondary Attorney} (Bar #), and a third attorney as needed to comply with caseloads and calendar sizes. If, due to vacation, illness, or other unavoidable conflict, the aforementioned attorneys are unavailable, Attorney may be represented by any other attorney from Attorney's firm who is licensed and in good standing with the Washington State Bar Association. Therefore, the Attorney, through its authorized representative, has signed this Agreement below to indicate that Attorney is bound by its terms. This Agreement shall not be performed by other individuals and may not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by the Attorney without the express written consent of the City shall be void.
10. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Attorney.
11. **Entire Agreement.** The written provisions in terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
12. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

**CITY:**

City of Aberdeen  
Attn: Human Resources  
200 East Market Street  
Aberdeen, WA 98520

**ATTORNEY:**

13. **Nonwaiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options, and the same shall be and remain in full force and effect.

14. **Resolutions of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the contracted City Corporation Counsel, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the District Court or to the Washington State Bar Association as appropriate. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged

communication between the Attorney and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Attorneys' fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Grays Harbor Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF ABERDEEN**

By: \_\_\_\_\_  
Mayor

**{ATTORNEY FIRM NAME}**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Printed Name)



**CONTRACT FOR INDIGENT DEFENSE SERVICES –  
CONFLICT COUNSEL**

WHEREAS, the City of Aberdeen, Washington (hereinafter "City") provides public defense services pursuant to contract with a primary Public Defender and a primary Conflict Counsel, and

WHEREAS, the City wishes to engage the services of an additional, experienced defense counsel to cover conflict cases and overflow cases as defined herein in the event of conflict or the absence of the Public Defender.

WHEREAS, a decision by the Federal Court for the Western District of Washington, the Honorable Robert Lasnik, in a case styled *Wilbur, et al v. Mt. Vernon, et al* (hereinafter the "Decision") emphasizes the need for the City to provide indigent defense services to misdemeanor clients in municipal and district courts in a manner which fully complies with the City's obligations under the Sixth and Fourteenth Amendments to the United States Constitution, and

WHEREAS, the Washington Supreme Court has adopted standards regarding the caseload of Public Defenders and the Washington State Office of Public Defense has provided guidance regarding case weighting system, and

WHEREAS, the City has conducted an evaluation of its public defense system, including the court system and appointment process, NOW, THEREFORE,

In consideration of the mutual benefits to be derived and the promises contained herein, the City of Aberdeen, Washington, a municipal corporation ("City"), and **{Attorney or Law Firm}**, the individual Conflict Counsel who will perform services under this contract have entered into this Agreement.

1. Scope of Services, Standards and Warranties. The Conflict Counsel will provide indigent defense services in assigned misdemeanor cases and at arraignment and in-custody calendars in accordance with the standards adopted by Resolution 2015-02 as the same exists or is hereafter amended, Supreme Court Standard 3 regarding indigent defense, and WSBA Standards for Indigent Defense (hereinafter "Standards") and the Decision. The Conflict Counsel individually warrants that he/she has read and is fully familiar with the provisions of the Standards adopted by the City and the Decision. Compliance with these Standards and the Decision goes to the essence of this Agreement.

1.1 The Conflict Counsel shall certify compliance with Supreme Court Rule and governing case load quarterly with the Municipal Court on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing. The Conflict Counsel warrants that he/she shall conform to the case load limitations not only with respect to services under this Agreement but also with respect to his/her practice as a whole, including other contracts for public defense and/or private practice.

1.2 Conflict Counsel will maintain contemporaneous records documenting all work performed on each assigned case.

1.2.1 the number of cases assigned to the Conflict Counsel during the period with a year to date total:

1.2.2 the number of resolved cases in which the following services were requested:

- 1.2.2.1 Expert services;
- 1.2.2.2 Interpreter services;
- 1.2.2.3 Investigator was utilized;
- 1.2.2.4 In which motions were filed resulting in dismissal or significant reduction of charges;
- 1.2.2.5 Tried to a jury or in which charges were dismissed or significantly reduced on the day of trial;
- 1.2.2.6 Resolved by a dismissal of the charges, a significant reduction in charges, or dismissal of other cases and plea on the remaining case(s); and
- 1.2.2.7 Number of cases in which the defendant failed to appear for a trial setting.

1.2.3 The number of appeals and/or writs; and

1.2.4 The number and type of criminal cases handled outside of this contract by the Conflict Counsel ("service providers") (including all cases assigned by any another public entity); and

1.2.5 The percentage of the Conflict Counsel's practice spent on civil or other non-criminal matters.

1.3 The Conflict Counsel will undertake training in accordance with City and WSBA Standards. Conflict Counsel shall participate in continuing legal education (CLE) programs providing at least seven (7) hours applicable to criminal defense in a misdemeanor setting.

1.4 The Conflict Counsel further warrants that the payment reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services, routine investigation, and systems necessary to comply with the Decision and Standards except as provided in Section 2.4 below.

1.5 The Conflict Counsel promises that he/she will promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with the Decision and/or the Standards.

2. Compensation. Effective January 1, 2023, the City shall pay to the Conflict Counsel for services rendered under this Contract the sum of \$XXX per case for conflict and overflow assignments. The Conflict Counsel will bill the City monthly for services rendered. The City will pay the Conflict Counsel upon assignment for assigned cases and hourly for calendars covered during the month. The Conflict Counsel will receive assignments from the court in the event of conflict. Additional compensation may be provided to Conflict Counsel as follows: Conflict Counsel shall be paid an additional fee of \$XXX for any scheduled jury trial where an attorney is required to appear on the day of trial regardless of whether a jury is selected, or the case proceeds to verdict. Additionally, Conflict Counsel shall be paid an additional fee of \$XXX for any appeal to the Superior Court in which a brief

is filed.

The compensation amount represents the resources necessary to provide Public Defense services through the undersigned counsel as supplemented in Section 2.4 below, along with all infrastructure, support, and systems necessary to comply with the Standards and Decision including by way of illustration and not limitation, training, research, secretarial and office facilities. The parties believe that they have provided sufficient capacity through this contract as well as contracts with other counsel for conflict and overflow public defense cases, to ensure that, in all respects and at all times, public defense service will comply with the Standards and Decision. The parties understand and agree that the Conflict Counsel maintains a private practice and serves other communities.

2.1 Case Counts. Based upon case counts maintained by Public Defender and reviewed by the City, the average monthly case counts in 2021 for all Conflict Attorneys required by the City was five (5). The City uses an unweighted case count.

2.2 Base Compensation. Except as expressly provided in Section 2.4, the cost of all infrastructure, administrative support and systems, as well as standard overhead services necessary to comply with the established standards, are included in the base payment provided in Section 2.1 above.

2.3 Payments in Addition to the Base Compensation. The City shall pay directly to the service provider or Conflict Counsel, as appropriate, for the following case expenses when reasonably incurred and approved by the Court or Contract Administrator:

2.3.1 Discovery. Discovery shall be provided in accordance with law and court rule by the City Prosecutor. For post-conviction relief cases, discovery includes the cost to obtain a copy of any charging or court files pertaining to the underlying case.

2.3.2 Preauthorized Expenses. Case expenses may be requested by the Conflict Counsel and preauthorized by order of the Court. Unless the services are performed by Conflict Counsel's staff or subcontractors, such expenses include, but are not limited to:

- (i) investigation expenses;
- (ii) medical and psychiatric evaluations;
- (iii) expert witness fees and expenses;
- (iv) interpreters;
- (v) polygraph, forensic and other scientific tests;
- (vi) unusually extensive computerized legal research; and
- (vii) any other non-routine expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case. In the event any expense is found by the Court to be outside of its authority to approve, the Public Defender may apply to the Contract Administrator for approval, such approval not to be unreasonably withheld.

2.3.3 Lay Witness Fees. Lay witness fees and mileage incurred in bringing

defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.3.4 Copying Clients' Files. The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.3.5 Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Public Defender is limited to no more than two copies;

2.3.6 Records. To the extent such materials are not provided through discovery, medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

2.3.7 Process Service. The normal, reasonable cost for the service of a subpoena.

3. Term. The term of this agreement shall be from the date of execution for the period January 1, 2023 through December 31, 2024. This is a nonexclusive contract and no minimum number of cases assignments is guaranteed. The agreement may be extended on a month to month basis with the mutual agreement of the parties until such time as a successor agreement for Conflict Counsel services is approved.

3.1 For Cause. This agreement may be terminated for good cause for violation of any material term of this agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards or the Decision, the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney or any Public Defender providing service under this agreement, has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Conflict Counsel who shall have thirty (30) business days to cure the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.

3.2 Termination on Mutual Agreement. The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

3.3 Obligations Survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

3.3.1 Representation. The compensation established in this agreement compensates Conflict Counsel for services relating to each and every assigned case. Therefore, in the

event this agreement is terminated, the Conflict Counsel will continue to represent clients on assigned cases until a case is concluded on the trial court level or the defendant fails to appear and a warrant issues.

3.3.2 The provisions of sections 1 and 5, as well as this subsection 3.3 survive termination as to the Conflict Counsel. The City shall remain bound by the provisions of section 2.4 with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

4. Nondiscrimination. Neither the Conflict Counsel nor any person acting on behalf of the Conflict Counsel, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this agreement.

5. Indemnification. The Conflict Counsel agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Conflict Counsel's fees or awards, and including claims by Conflict Counsel's own employees to which Public Defender might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Conflict Counsel, his/her officers or agents.

It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Conflict Counsel's immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

The City agrees to hold harmless and indemnify the Conflict Counsel, his/her officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Conflict Counsel's fees or awards, arising out of or in connection with any willful misconduct or negligent error or omission of the City, its officers or agents.

This clause shall survive the termination or expiration of this agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

6. Insurance. The Conflict Counsel shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the Conflict Counsel, or the agents, representatives, employees, or subcontractors of the Conflict Counsel.

6.1 Verification of Coverage. Conflict Counsel shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the City. The Conflict Counsel shall provide the City with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Contract. The purpose of "tail coverage" is to



provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract.

7. Work Performed by Conflict Counsel. In addition to compliance with the Standards, in the performance of work under this Agreement, Conflict Counsel shall comply with all federal, State and municipal laws, ordinances, rules and regulations which are applicable to Conflict Counsel's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at Conflict Counsel's Risk. Conflict Counsel shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorney's own risk, and the Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Conflict Counsel shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of the Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Conflict Counsel has personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by the Conflict Counsel without the express written consent of the City shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Conflict Counsel. An additional attorney may be added to this Agreement by adding his or her signature to these agreements.

11. Entire Agreement; Prior Agreement Superseded. The written provisions in terms of this Agreement, to get her with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. Upon execution, this Agreement shall supersede any and all prior agreements between the parties.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITY  
City of Aberdeen  
Attn: Dani Smith

CONFLICT COUNSEL

200 East Market Street  
Aberdeen, WA 98520

13. Non-waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Contract Administrator, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the City's Municipal/District Court or to the Washington State Bar Association as appropriate. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between the Conflict Counsel and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Conflict Counsel's fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Grays Harbor County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF ABERDEEN

By: \_\_\_\_\_  
Pete Schave, Mayor

ATTORNEY

By: \_\_\_\_\_  
{Name}